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ORIGINAL ARTICLE

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A new narrative for European migration policy: Sustainability and the Blue Card recast

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Abstract

The Blue Card Directive 2009/50 has failed. It sets conditions for entry and residence in the EU for third-country nationals in highly qualified and well-paid employment. Recently, negotiations over its recast have come to life, and gives reason to discuss the way forward. This comment reflects on the European Blue Card Directive 2009/50 and its recast and the thoughts presented in this special issue by two legal practitioners, Jo Antoons and Andreia Ghimis, and a philosopher, Johan Rochel. I argue in favour of a new narrative focusing on sustainable labour migration, instead of the current narrative which is based on solving old problems. More particularly, drawing from intersecting policy fields (environment, foreign investment, integration and migration policy), this contribution revisits three themes at the core of the Blue Card and its reform: the economic needs test, privatisation through the concept of a trusted sponsor, and intra-EU mobility rights for migrant workers.

1 | INTRODUCTION

The European Blue Card Directive 2009/50 has failed. The Directive sets conditions for entry and residence of third-country nationals in highly qualified and well-paid employment. A recast was proposed in 2016 but negotiations were blocked because, for one, the Member States wanted to keep parallel national entry schemes, so a wish for full harmonisation was absent. However, following the September 2020 *New Pact on Migration and Asylum*, negotiations have come to life. This gives reason to discuss the Blue Card, the recast proposal and the ways forward. This contribution comments on two practitioners' and a philosopher's position, expressed in this journal, on the European Blue Card Directive 2009/50 and the revival of the recast. Antoons and Ghimis, the practitioners, hail the revival and echo businesses' need for high-skilled migrant workers. Hence, they wish for more business-enabling and migrant-attracting adjustments. On the other hand, Rochel, the philosopher, is concerned. He finds recruiting highly qualified third-country nationals for European benefit worrisome. He fears the EU is neglecting its moral obligation

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not to interfere arbitrarily in migrants' rights and the interests of their country of origin. His point goes to worries over (un)ethical recruitment and the labour market demands in countries of origin. My own argument departs from the unsustainable situation the "Great Acceleration" has brought to our society. I argue for a new narrative focusing on *sustainable* labour migration, instead of the current narrative of labour migration for economic growth. The current narrative of economic growth, combined with fear of labour market disturbances, is based on solving old problems. Interestingly, while sustainable development has for quite some time been "at the heart of the European project and the EU Treaties give recognition to its economic, social and environmental dimensions that should be tackled together",¹ we do not read about the sustainability of labour migration into the EU in EU migration policy documents. Although there is a growing body of literature on climate-induced migration,² the link between EU migration policy and sustainability has not yet been established. I present some first steps towards a much-needed new narrative for sustainable European (labour) migration policy.

My comment starts by briefly mapping the state of play of the Blue Card Directive recast negotiations at the end of 2020 (Section 2). Next, I reflect on three themes key to the recast and discussed by the practitioners and the philosopher at different levels: the economic needs test, the employer as recognised sponsor, and intra-EU mobility. I will assess them according to a new narrative of sustainable labour migration policies. On this ground, I will argue that the Blue Card Directive recast has great potential for the EU (Section 3). I end with my conclusions (Section 4).

2 | STATE OF PLAY

The Blue Card Directive is one of seven Directives on legal migration into the EU.³ There is no case law from the EU Court of Justice on its functioning⁴; nor are there guidelines or implementing acts. The Blue Card Directive was adopted in 2009 after two years of negotiations and is an important aspect of implementing the Lisbon Strategy of the European Commission. The Member States had until 19 June 2011 to transpose the Directive, which 20 of the then 24 EU countries bound by the Directive failed to do on time.⁵ The Blue Card Directive sets conditions for entry and residence of third-country nationals (TCNs) for highly qualified employment, a right to equal treatment with nationals, and rights for family members. It also includes a limited intra-EU mobility right, discussed in more detail in Section 3.3. Important to note is that currently excluded from the Directive's scope are, amongst others, beneficiaries of international protection. All Member States, but for Denmark and Ireland, are bound by it. In 2014, the Commission concluded that the wide variety of implementation practices of the Directive resulted from, amongst others, the fact that it only sets minimum standards and leaves much leeway to the Member States through the

¹<https://ec.europa.eu/environment/sustainable-development/> (accessed 5 February 2021); The Treaty of the Functioning of the EU demands the Union shall ensure consistency between its policies and activities, taking all of its objectives into account (Art. 7 TFEU), which includes sustainable development (Art. 11).

²The literature on the Sustainable Development Goals focuses on the impact of EU policies on the developing world; see, e.g., B. Likić-Brborić, 'Global Migration Governance, Civil Society and the Paradoxes of Sustainability', in C.-U. Schierup, B. Likić-Brborić, R.D. Wise and G. Toksöz (eds.), *Migration, Civil Society and Global Governance* (Routledge, 2019), at 32–48. Also, see D. Manou, A. Baldwin, D. Cubie, A. Mihr and T. Thorp (eds.), *Climate Change, Migration and Human Rights: Law and Policy Perspectives* (Routledge, 2017). For example, in this volume, Fornalé addresses existing labour mobility instruments and how they can positively foster resilience in the Pacific: E. Fornalé, 'Labour Mobility Options as Adaption Strategies to Environmental Changes?', at 203–215.

³The EU legal migration acquis consists of seven directives adopted between 2003 and 2016: the Family Reunification Directive and the Long-Term Residents Directive both adopted in 2003; the Students and Researchers Directive of 2016, merging two directives originally adopted in 2004/2005; three directives on admission of TCN for certain categories of employment: the 2009 Blue Card Directive on admission of highly qualified workers, the Seasonal Workers Directive and the ICT-Directive on intra-company transferees both adopted in 2014; and, finally, the Single Permit Directive of 2009. Together, these seven directives cover the three main categories of legal migration (family members, students and workers). Only the admission of low (other than seasonal) and medium-skilled workers, and of self-employed third-country nationals, is not covered by these instruments.

⁴CJEU C-462/20, ASGI pending.

⁵European Commission, 'Communication from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment'. COM(2014) 287 final, Brussels, 22 May 2014, <https://bit.ly/30sChxl>.

many “may-clauses” and references to national legislation it embeds.⁶ The Directive had not contributed to making the EU an attractive destination for highly qualified migrants. The Commission concluded the Directive had failed.⁷

Major changes proposed in the recast include the abolition of national parallel schemes, redefining skills, diversifying the salary threshold and increasing opportunities for intra-EU mobility.⁸ A major obstacle in the negotiations is the inability to maintain national schemes. The revival of the recast in 2020 follows from the Commission's promise to no longer forbid parallel schemes. Another obstacle to reaching agreement is the proposal's lower salary threshold and lower degree of experience (three years working experience instead of a formal qualification) which might facilitate the entry of medium-skilled labour migration, a development shunned by some Member States.

In the 2020 *New Pact on Migration and Asylum*, the Commission announces it will further the EU legal migration acquis in the years to come.⁹ Demographic trends in Europe, foreseeable shortages in national labour markets, and a lack of talent in order to promote innovation are challenges that the European Commission intends to address with legal migration and a “skills and talent package”. To improve the legal migration acquis for the purpose of demographic and labour market demands, the Commission persisted in the need for a recast of the Blue Card Directive.¹⁰ In late November 2020, the German Presidency suggested ingredients for a compromise which “will give the Blue Card the attractiveness it needs while at the same time maintaining the necessary level of flexibility with regard to national labour markets.”¹¹ Key topics for the new negotiation rounds include the following:

1. Allowing the Member States to **maintain parallel national schemes**.
2. **Facilitating switching to the Blue Card** for migrants with a national permit and including their time spent with a national permit in the period of residence required for long-term residence. Note that this is also on the practitioners' wish list.
3. Limited but mandatory **extending of the scope to high-skilled** (instead of highly qualified) professionals in the information and communication technology sector,¹² as the Member States previously opposed a general opening of the scope towards professional skills. It still has to be settled whether skills are to be attained over three (European Parliament and Presidency) or five (Council) years of professional experience.
4. Departing from **raising the maximum period of temporary unemployment** to six months, bringing it back to three consecutive months in the first two years of residence as a Blue Card holder. Beyond those two years, a period of six months of unemployment should not lead to expulsion. Thus, the proposal offers step-wise inclusion into unemployment insurance arrangements.
5. **Conditional labour market tests only** in case of “disturbances”, such as a high level of unemployment in a given occupation, sector or region and during the first 12 months of stay in case of switching employers. Furthermore, no labour market tests would apply to family members, to facilitate their integration, provided that such a test is not applied to the Blue Card holder.
6. Introducing a **notification procedure for long-term mobility** in accordance with the one in place for intra-corporate transfers (Directive 2014/66) and students and researchers (Directive 2016/801), besides an application procedure, at the discretion of the Member States.

⁶Ibid., at 10.

⁷Germany is actually the only Member State in which the Directive became its key instrument for attracting highly qualified migrants. Pre-COVID-19, Germany granted 29,000 Blue Cards, 78% of the total of 36,806. Poland followed suit with far less (2,104; 5.7%) and France (2,039; 5.5%). The other Member States are hardly worth mentioning with fewer than 800 Blue Cards granted in 2019. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Residence_permits_%E2%80%93_statistics_on_authorisations_to_reside_and_work#EU_Blue_Cards_issued_to_highly_qualified_non-EU_citizens (last accessed 21 September 2020).

⁸Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, 7 June 2016, COM(2016) 378, 2016/0176(COD).

⁹Communication on a New Pact on Migration and Asylum, COM/2020/609 final of 23 September 2020.

¹⁰Ibid., at 25.

¹¹Note from the Presidency, 26 November 2020, 13,407/20; Interinstitutional File 2016/0176 (COD).

¹²The Presidency suggests allowing an extension of the list of professions through Implementing Act or Delegated Act, 13,407/20, at 8.

7. Simplifying procedures in case of intra-EU mobility, including “trusting” the first Member State's diploma recognition.

When an agreement is reached, it will be a compromise that could, but not necessarily will, change much on the ground because the parallel national schemes will remain.

3 | RECASTING UNDER A SUSTAINABLE LIGHT THREE KEY ISSUES THAT GIVE CAUSE FOR CONCERN

The practitioners call for advancing the Blue Card to facilitate employers' demands for these migrant workers while the philosopher, not contesting this need, takes the perspective of the migrants and their country of origin. I argue that the philosopher's “republican” analysis to avoid arbitrary interference is a helpful tool to criticize employers' “needs” and the impact of those needs on the wider receiving society. The critique by Antoons & Ghimis and Rochel on the EU Blue Card Directive (BCD) and its recast targets the strict eligibility criteria, especially the qualification and income threshold (merit and money) and the existence of competing national admission schemes. Their critiques dovetail on the limited intra-EU mobility rights for third-country nationals with a Blue Card: the practitioners pinpoint how workers' mobility into other EU Member States—especially outside the firm—is of little value to a firm. The philosopher, on the other hand, takes the migrants' perspective and sees its value as an instrument to avoid workers' precariousness by being tied to an employer for migration purposes for too long. I will present yet another perspective.

3.1 | Economic “needs” reframed

Recital 7 of the BCD preamble stipulates that “it is also necessary to take into account the priorities, labour market needs and reception capacities of the Member States”. According to De Haas, Castles and Miller, “Narratives about the ‘need’ for migrant workers conceal subjective economic interests and social status motives, and the power of dominant classes to push through immigration policies—or the absence of enforcement—that reflect their interests. It also expresses certain political choices about how to organize societies and economies”.¹³ De Haas et al. call the *need* for migrant workers a social construction, though writing on migration for low-skilled jobs. The same discourse is used on the Statewatch website: “The term ‘Blue Card’ is a euphemism for ‘legal migration’ through which the EU seeks out skilled labour from the South and elsewhere to maintain its standard of living in the face of an aging population and shrinking workforce.”¹⁴ Following the republican approach by Rochel, and more eloquently put, he warns of a “potential for arbitrary interferences upon third countries” through the Blue Card. De Haas et al. suggest we speak of a “demand” instead. Given that some vacancies, especially those requiring highly technical skills, remain unfulfilled for years, the *demand* is real. Apparently alternatives, such as automation or training of the national workforce, are less cost efficient than migrant workers.

Interestingly, COVID-19 is expected to expand the market of distant co-working instead of expatriation to Europe or outsourcing a whole production line to, for example, India.¹⁵ Hence, we might see a change in the demand for high-skilled migrant workers post-COVID-19. This is not the practitioners' expectation. They posit, and in doing so more or less echo the opening lines of the *New Pact on Migration and Asylum*, that “the future skills and labour workforce shortages, together with the demographic challenges, and the economic impact of the

¹³H. De Haas, S. Castles and M.J. Miller, *The Age of Migration*, 6th ed. (Red Globe Press, 2020), at 277–278.

¹⁴<https://www.statewatch.org/news/2017/january/council-of-the-eu-european-public-prosecutor-s-office-blue-card-legal-migration-humanitarian-visas/> (accessed 31 January 2021).

¹⁵H. Hueck, ‘Thuiswerken vanuit India, kan dat?’ [Home-office from India, does that work?]. *Financieel Dagblad*, 23 January 2021.

COVID-19 sanitary crisis will increase the EU's need for highly skilled migration.” Rochel does not problematise the need for highly qualified migrants. He does call the instrument of labour market tests, the practical implementation of testing economic demand, a legitimate interest of the Member States “to preserve their own population from arbitrary interferences that would negatively impact their common resources.” In this frame, the labour market test is a tool for protectionism in cases where a Member State's labour market suffers from serious disturbances, such as a high level of unemployment in a given occupation or sector in a particular region in its territory.¹⁶ Thus, *unemployment* is still the measure of disturbance. But with declining populations, unemployment might not be what we need to worry about.¹⁷

We need a narrative change in labour migration policy. A new narrative is necessary because, in the words of the European Environment Agency: “The world is undergoing rapid change. Numerous drivers of change interact in a highly complex interplay of human needs, desired activities and technologies and contribute to the Great Acceleration in human consumption and environmental degradation. Human civilisation is currently profoundly unsustainable.”¹⁸

The “Great Acceleration” is the serious disturbance we face, not the unfulfilled needs of businesses for economic growth per se nor our fear of unemployment. We require a narrative of sustainability in labour migration. Labour migration policy does not yet focus on how labour migration contributes to innovative sustainable solutions for degrowth.¹⁹ Nor do we know if such insights are brought into the migration policy-making process. It might be too late for the Blue Card Directive recast to make this turn, and if it would, it might never be agreed upon. Degrowth, or simply accepting the slowing down of the acceleration, is not (yet) a commonly shared objective.

It would be a pity if the Blue Card recast did not come into force though: it has aspects that *could* contribute to a sustainable, inclusive European labour market. Before outlining that argument further, I want to argue against one other suggestion by the practitioners: privatisation.

3.2 | Risks of privatising the economic needs test

The practitioners, on behalf of their business clientele, advocate the labour migration management tool of the “trusted sponsorship”. The tool is not mentioned in the Presidency's possible ways forward, suggesting it is not a contested part of the recast.²⁰ The trusted sponsorship is a tool to avoid a labour market test *and* facilitate fast track procedures. Trustworthy businesses get the status of “recognised or trusted sponsor” and benefit from less paperwork and fast track procedures. Thus, taking Rochel's republican perspective, the trusted sponsorship reduces arbitrary State interference in businesses “freedom of choice of migrant workers”.

The model of the trusted sponsorship has evolved into a common tool in EU labour migration law since a predecessor was proposed in the 2001 proposal for a Directive on the conditions of entry and residence of TCNs for the purpose of paid employment and self-employed economic activities.²¹ The Directive permitted Member States to adopt national provisions according to which the fulfilment of the economic needs test would be replaced if a defined amount of money has been paid by the future employer of that person to the competent authorities. What I liked about the proposal, also from a sustainability perspective, was that Member States had to spend the money received from the employer for measures promoting the integration of TCN or for vocational training purposes.

¹⁶Art. 6 BCD Recast.

¹⁷I realise that during COVID-19 lockdowns unemployment was on many people's minds; I am, however, engaging a long-term perspective.

¹⁸European Environment Agency, *Growth without Economic Growth*, Briefing, 11 January 2021.

¹⁹Degrowth is a term used for a political, economic and social movement and for theories that critique the paradigm of economic growth.

²⁰Article 12 BCD recast; Council Document 5336/17, 18 January 2017, at 46–47 tells us that, during the previous rounds of negotiations, Germany and France placed scrutiny reservations on the whole Article though, and Belgium asked for more clarification, expressing worries over the extra administrative burden it would entail to set up such a scheme.

²¹COM (2001) 386. This all-encompassing Directive on labour migration never saw the light of day. It was withdrawn in 2006, OJ C-64, 2006, at 8. The relevant provision was Article 6, para. 5, at 12.

The Student and Researchers Directive (SRD) 2016/801 and the Intra-Corporate Transfer (ICT) Directive 2014/66 on transfers of managers and specialists within a multinational corporation (MNC) have embraced the concept of the trusted sponsor.²² The ICT Directive includes high standards of State control of the sponsor, an instruction missing in the SRD.²³ Neither Directive mentions stimulating the integration of the migrants involved, nor does the Blue Card Directive recast.

Elsewhere, I have labelled the tool of the “trusted sponsor” as a privatisation of the selection of migrant workers, or permissive State action.²⁴ The Netherlands is, to my knowledge, the only Member State that has embraced the tool in full in its national “parallel” high-skilled migration scheme, in student migration and, optionally, in ICT migration. In practice, a risk that comes with the tool regards the inability of migrants to file an application (for extension) themselves: they fully depend on their trusted sponsor and if the sponsor makes an error, the residency rights of the migrant are at stake. High-paid migrants and their families have lost years of legal residence counting towards permanent residence because their employer failed to report to the immigration authorities in a timely manner a change in the corporate structure. Such a consequence was not deemed disproportionate by the highest court. A Blue Card is seldomly applied for because, as Antoons and Ghimis also point out, there is nothing attractive about the Blue Card for the employer: it only facilitates the worker to leave. Rochel is in favour of the Directive *because* it allows the migrant to leave the employer.²⁵ From a migrant and social inclusion perspective, I would agree with Rochel. I would leave the tool of trusted sponsorship optional, at the most. The scheme does little for sustainability because it entails a risk of employer dependency for the migrant worker, which can easily turn into precariousness in respect to the labour relation or migration rights.

Taking the narrative of sustainability I am also hesitant to advocate further use of this “migration management tool” of privatisation from the States’ perspective. From the perspective of the State, it is questionable if this is indeed an “easier” way to control migration (in a sustainable manner or otherwise). The business must be scrutinised by the immigration authorities used to scrutinise people. Investigative journalism into the Dutch experience with the instrument has recently revealed that organisations with ties to espionage and weapons trade have such recognised sponsor status under the national highly skilled scheme.²⁶ These organisations can more or less freely recruit high-paid migrant workers to come into the Netherlands, and subsequently Europe, as long as they comply with the necessary administrative requirements.²⁷ These organisations might not have made it through the EU screening on public security under the new foreign direct investment screening regulation, which became fully operational as of 11 October 2020.²⁸ On this tool, executive Vice-President Valdis Dombrovskis said: “The EU is and will remain open to foreign investment. But this openness is not unconditional. To respond to today’s economic challenges, safeguard key European assets and protect collective security, EU Member States and the Commission need to be working closely together.”²⁹ The Blue Card recast proposal does not list public security as a ground for refusal.³⁰ An “all of

²²This discussion builds on an earlier publication, T. de Lange, ‘A “Guildian” Analysis of the Equivocal Trusted Sponsorship under EU Labour Migration Law’, in P. Minderhoud, S. Mantu and K. Zwaan (eds.), *Caught in between Borders. Citizens, Migrants and Humans* (Wolf Legal Publishers, 2019), at 209–216.

²³See K. Groenendijk, ‘The Risks of Increased Third Party Involvement in the Application of Immigration Law’, in D. Faber, B. Schuijling and N. Vermunt (eds.), *Trust and Good Faith Across Borders* (Wolters Kluwer, 2017), at 31–34.

²⁴See T. de Lange, ‘The Privatization of Control over Labour Migration in the Netherlands: In Whose Interest?’ (2011) 13 *European Journal of Migration and Law*, 185.

²⁵Rochel is right to address the vulnerability of migrant workers vis-à-vis their employer, a relationship more closely knit when a trusted sponsorship scheme is in place. Hence, the sponsorship enhances the risk of an abusive relationship.

²⁶A. Kootstra and K. Kuijpers, ‘Het gouden paspoort. Handel in Nederlandse visa [The Golden Passport. Trade in Dutch visas]’, *De Groene*, 3 February 2021.

²⁷On the Dutch scheme, see T. de Lange and P. de Sena, ‘Your Income is too High, Your Income is too Low: Discretion in Labour Migration Law and Policy in the Netherlands and Macau’ (2019) 7 *The Theory and Practice of Legislation*, 131–151. Abuse of the scheme is understudied, but when brought to light, see, for the consequences, Case C-557/17, *Y.Z. v. the Netherlands*, ECLI:EU:C:2019:203.

²⁸Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

²⁹https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1867 (accessed 31 January 2021) regarding the Regulation (EU) 2019/452. There is no mention of sustainability in this Regulation and the only reference to the environment is to the EU’s open investment environment (recital 2).

³⁰Article 12(3) Blue Card recast proposal. The Commission proposed obligatory refusal grounds but the Member States (Austria, Netherlands and Sweden) asked for and got discretion; hence, it became a “may” be refused, Council Document 5336/17, 18 January 2017, at 47.

government” approach is required to link sustainability goals in environmental policy to trade and investment policies, *and* to link it up with migration policy. I dare say that putting migration policy at a distance from the State would not contribute to operationalising a narrative shift towards degrowth and social inclusion.³¹

3.3 | Social and sustainable inclusion through free movement?

An important aspect of the Blue Card Directive recast, and here I side with the practitioners and the philosopher, is the improved intra-EU mobility it offers. The practitioners are especially contented with the short-term mobility for business purposes the recast offers, because in practice many companies operate in multiple EU Member States, seeing it as a Single Market.³² The philosopher hails the long-term intra-EU mobility and the opportunity it offers migrants to build up rights towards permanent residence through living in more than one Member State. Free movement is the ultimate autonomy for individuals.³³ The German Presidency, in its suggestions for a possible way forward, offered Member States a choice of procedures (application or notification) to screen the Blue Card holders coming from other Member States.³⁴ The focus on these procedural aspects supports Rochel's analysis of Member States' fear of intra-EU mobility for reasons pertaining to lack of control and financial burdens.³⁵ Lack of trust between the Member States was indeed why the current Blue Card has such a meagre facility for intra-EU mobility.³⁶

Not touched upon by the practitioners or the philosopher is that the Blue Card permit will also become available to third-country nationals qualifying as beneficiaries of international protection as well as the third-country national family members of mobile EU citizens.³⁷ “They will be able to take up employment across Member States in accordance with their skills and education and fill occupational shortages in particular regions. This allows them to be active in the labour market also in cases where there are no vacancies in their specific field in the Member State that granted them protection.”³⁸ The Commission expects a positive social impact from the extension of the scope of the Directive because it facilitates labour market participation of the beneficiaries, which “favours their integration and their ability to provide for their own livelihood”.³⁹

Given the demographic changes and “need” for migrant workers in at least parts of the EU, engaging the “talent” already present in the EU appears an obvious way forward. Instead, most third-country nationals are made to wait for at least five years before they may become mobile EU citizens or, to a far lesser extent, mobile long-term residents.⁴⁰ For reasons of social inclusion, complementary to the environmental and economic dimensions of sustainability, one could argue it best if *all* legally residing third-country nationals were free to move within the EU.⁴¹ If the

³¹Maybe if only businesses that contribute to green growth or degrowth were offered the trusted sponsor facility, it would strengthen the new paradigm, but I suppose that's not what the practitioners had in mind.

³²Art. 19 BCD and Art. 23(1)a BCD recast.

³³Arts. 20–21 BCD recast.

³⁴Note from the Presidency, 26 November 2020, 13,407/20; Interinstitutional File 2016/0176 (COD), at 9.

³⁵This reading is supported by the position of some Member State in earlier negotiation rounds, where France suggested only the highly qualified should be allowed to use the intra-EU mobility and Austria wanted a full application procedure to assess qualifications; Council Document 5336/17, 18 January 2017, at 61.

³⁶T. de Lange, ‘The EU Blue Card Directive: A Low Level of Trust in EU Labour Migration Regulation’, in C. Grütters and T. Strik (eds.), *The Blue Card Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Wolf Legal Publishers, 2013), at 17–25.

³⁷Recital 8 and Article 3 BCD recast, where only those who seek protection are excluded from the Directives' scope while the BCD in force excludes from its scope those who are beneficiaries of protection, Art. 3(2)b,c as well as family members of union citizens, Art. 3(2)e BCD 2009/50/EC.

³⁸Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, 2016/0176 (COD), at 12.

³⁹*Ibid.*

⁴⁰K. Groenendijk, ‘The Genesis of Free Movement of Persons in the EU: Why and for Whom?’, in: D. Bigo, T. Diez, E. Fanoulis, B. Rosamond and Y.A. Stivachtis (eds.), *The Routledge Handbook of Critical European Studies* (Routledge, 2020), at 283–306. On the mobility of long-term residents and consequences of pre-mature mobility, see L. Della Torre and T. de Lange, ‘The “Importance of Staying Put”: Third Country Nationals' Limited Intra-EU Mobility Rights,’ (2018) 44 *Journal of Ethnic and Migration Studies*, 1,409–1,424.

⁴¹The argument is made by Rochel, based on the notion of fair treatment. See also T. de Lange and K. Groenendijk, ‘The EU's Legal Migration Acquis: Patching up the Patchwork’, European Policy Centre Issue Paper (2021).

measurement of the contribution of migrant workers to growth were to change from mere economic variables to the wider set of sustainability indicators, their social inclusion into the Single European Market could mean “growth”.

When the European Commission speaks of social inclusion, however, the discourse is different. In its *Action Plan on Integration and Inclusion 2021–2027*, the Commission aims at “Empowering both migrants and host communities to actively engage in the integration process (which) is essential to achieve sustainable and successful integration.”⁴² It is about the European way of life being inclusive, everybody matters, no one should be left behind and everybody should have access to equal opportunities. When the Commission speaks of freedom, it is not freedom of movement, but freedom of speech and religion. When the Commission speaks of investments and innovation, it is about “forms of socialisation in the diaspora communities in the EU Member States. Diaspora can play a critical role to support inclusion in host societies, contribute to investments, innovation and development, while also preserving relationship with countries of origin.” The Commission is right to point out that migrants make up a significant part of the EU's workforce and often work in what are essential jobs. “Many migrants arrive with skills that are highly needed in our labour markets but they often face difficulties in having them valued and finding jobs that reflect their skills level. Migrant women are at particularly high risk of being over-qualified for their job, which may lead to depreciation of their skills.”⁴³ Not a word on integration into the Single European Market or the positive social impact of intra-EU mobility. In this respect, the European Skills Agenda for sustainable competitiveness, social fairness and resilience is a step ahead.⁴⁴ It explicitly suggests to “make a more strategic use of the potential and the skills of third country migrants already residing in the EU.”⁴⁵

The discourse of the Action Plan on Integration goes well with solving problems of the previous “refugee” crisis. The COVID-19 crisis results in useful suggestions for digitalisation of language and integration courses and awareness of the importance of migrants as essential workers. From the Skills Agenda and the Blue Card Directive recast, we know the Commission posits that intra-EU mobility favours integration. Yet a narrative *and* measurement of social inclusion of migrants (high-skilled or not) based on their intra-EU mobility, is yet to be developed. A research agenda is called for which delves further into the impact of including migrants that are already here in the European Single Market as well as investigating, for instance, the impact of working from abroad, in terms of sustainability.

4 | CONCLUSION

We need a new narrative for labour migration. In response to the Blue Card Directive recast, and a practitioners' and a philosopher's take on that recast, I have put forward three arguments towards changing the narrative of high-skilled migration. This narrative should be aligned with the narrative of the environmental crisis we face. Firstly, migration policy should depart from the notion of economic “needs” related to economic growth and the fear of unemployment as a serious disturbance. The economic growth-related reasons for pushing the Directive in 2016 no longer apply. Post-COVID-19, economic growth is no longer sustainable. The demand for highly skilled migrants should probably relate to sustainable innovations working towards degrowth or at least green growth. Secondly, further privatisation of the selection of high-skilled labour migrants is a bad idea because it would stand in the way of a “whole of government” approach to sustainability and foreign investment policies. Thirdly, the Blue Card Directive recast has great potential for the EU because of the intra-EU mobility and, thus, more sustainable social inclusion it offers labour migrants and beneficiaries of international protection alike.

⁴²Action Plan on Integration and Inclusion 2021–2027, 24 November 2020, COM(2020) 758 final.

⁴³Ibid., at 11.

⁴⁴COM(2020) 274, 1 July 2020.

⁴⁵Ibid., at 9.

In sum, I cannot escape the feeling that the European Commission and EU Member States are designing migration policy to solve the (problems that arose from) previous crises. This has largely been overlooked in the comments on the Blue Card Directive and its recast. The environmental challenges we face appear to be absent from the EU migration and integration policy discourse. Drawing from intersecting policy fields relating to environment, foreign investment, integration *and* migration, this contribution calls for a new narrative of a sustainable EU migration policy.

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